

1 THE HONORABLE RICARDO S. MARTINEZ  
2  
3  
4  
5  
6  
7  
8

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 **IN RE AMAZON SUBSCRIPTION  
10 SERVICES LITIGATION**

Case No.: 2:22-cv-00910-RSM

11 **STIPULATED MOTION AND ORDER  
12 FOR PLAINTIFFS TO FILE SECOND  
13 AMENDED COMPLAINT AND SET  
14 BRIEFING SCHEDULE**

**NOTE ON MOTION CALENDAR:**  
**APRIL 12, 2024**

15 On February 28, 2024, the Court issued an order granting in part and denying in part  
16 Amazon's motion to consolidate four actions: *Daly v. Amazon.com, Inc.*, No. 2:22-cv-00910-RSM,  
17 *Dorobiala v. Amazon.com, Inc.*, No. 2:22-cv-01600-RSM, *Adams v. Amazon.com, Inc.*, No. 2:23-  
18 cv-00913-RSM, and *Nicholas v. Amazon.com, Inc.*, No. 2:22-cv-01616-RSM. Dkt. 38  
(Consolidation Order). By way of this order, the Court consolidated *Daly*, *Dorobiala*, and *Adams*.  
19 The Court denied consolidation with respect to *Nicholas*, however, noting that, “[i]n this Court’s  
20 previous Order, Dkt. #37, the Court relied on Plaintiff’s prima facie showing that the Amazon  
21 Checkout Pages, Acknowledgment Emails, and cancellation processes were similar regarding  
22 Amazon Automatic Renewal subscription offerings like Amazon Prime, Audible, Kindle  
23 Unlimited, etc. Upon review of the Complaint in *Nicholas*, the ‘Subscribe & Save’ products are  
24 different from these distinctive Amazon subscriptions.” Consolidation Order at 6.

25 Before issuing the Consolidation Order, on February 26, 2024, the Court granted in part  
26 and denied in part Amazon's motion to dismiss the *Daly* Complaint. Dkt. 37. In its order  
27 consolidating *Daly* with the *Dorobiala* and *Adams* cases, the Court also directed that “Plaintiffs  
28

1 must file a consolidated complaint consistent with this Court's previous Order, Dkt. #37, within  
 2 thirty (30) days of the date of this Order." Consolidation Order at 9.

3 On March 29, 2024, Plaintiffs filed the First Consolidated Amended Complaint ("FCAC").  
 4 Dkt. 39. The FCAC includes claims based on Subscribe & Save in addition to other Amazon  
 5 subscription services.

6 In light of the FCAC's inclusion of claims regarding Subscribe & Save, Amazon reached  
 7 out to meet and confer with Plaintiffs' counsel about consolidation of *Nicholas* and *Subscription*  
 8 *Services*, and notified Plaintiffs that it planned to file a motion to consolidate by Friday, April 12  
 9 (14 days after the FCAC was filed). Plaintiffs have now agreed that they will not pursue any  
 10 claims based on Subscribe & Save in this consolidated action, and they will amend the FCAC  
 11 accordingly.

12 Amazon also contends that the FCAC includes claims and allegations that the Court  
 13 rejected when granting in part and denying in part Amazon's motion to dismiss in *Daly*, and that  
 14 the FCAC is subject to a motion to dismiss and/or strike. Plaintiffs disagree. Amazon has provided  
 15 Plaintiffs a list of allegations by paragraph number that Amazon contends are inconsistent with the  
 16 Court's order on Amazon's motion to dismiss. Plaintiffs have agreed to review and consider these  
 17 points, and are in the process of doing so, in the hope of resolving or narrowing those issues without  
 18 Court intervention. The Parties have also met and conferred regarding a broader case schedule,  
 19 and propose to submit it to the Court for its consideration, including as to any dates upon which  
 20 they cannot agree, shortly.

21 In view of these developments, Plaintiffs and Defendants have stipulated to and jointly  
 22 request that the Court approve the following schedule:

- 23 1. On or before April 19, 2024, Plaintiffs will file a Second Consolidated Amended  
 24 Complaint ("SCAC"), which will remove any claims for relief based on Subscribe  
 25 & Save;
- 26 2. Amazon will have until May 20, 2024 to file a motion to dismiss or strike, or  
 27 otherwise respond to, the SCAC;

3. Plaintiffs' opposition to any motion to dismiss or strike is due by June 19, 2024<sup>1</sup>;
4. Amazon's reply in support of any motion to dismiss the SCAC or strike is due by July 3, 2024.

Dated: April 12, 2024

Respectfully Submitted,

FENWICK & WEST LLP

By: /s/ Brian D. Buckley  
Brian D. Buckley, WSBA No. 26423

401 Union Street, 5th Floor  
Seattle, WA 98101  
Telephone: 206.389.4510  
Facsimile: 206.389.4511  
Email: [bbuckley@fenwick.com](mailto:bbuckley@fenwick.com)

Jedediah Wakefield (*pro hac vice*)  
Kimberly Culp (*pro hac vice*)  
Mary Griffin Sims (*pro hac vice*)  
Justin Stacy (*pro hac vice*)  
555 California Street, 12th Floor  
San Francisco, CA 94104  
Telephone: 415.875.2300  
Facsimile: 415.281.1350  
Email: [jwakefield@fenwick.com](mailto:jwakefield@fenwick.com)  
[kculp@fenwick.com](mailto:kculp@fenwick.com)  
[mgriffin@fenwick.com](mailto:mgriffin@fenwick.com)  
[jstacy@fenwick.com](mailto:jstacy@fenwick.com)

Esther D. Galan (*pro hac vice*)  
730 Arizona, 1st Floor  
Santa Monica, CA 90401  
Telephone: 310.434.5400  
Email: egalan@fenwick.com

*Counsel for Defendants*  
AMAZON.COM, INC. and AMAZON.COM  
SERVICES LLC

# HAGENS BERMAN SOBOL SHAPIRO LLP

<sup>1</sup> It is Plaintiff's position that Fed. R. Civ. P. 15(a)(1)(B) allows them as a matter of right, at their election, to amend the currently operative consolidated complaint in response to Amazon's anticipated motion to dismiss (or to its answer), where the Court ordered the filing of a consolidated complaint and where Amazon has neither filed an answer nor moved to dismiss in the *Dorobiala* and *Adams* matters. Amazon disagrees. By agreeing to a schedule for an opposition to Amazon's anticipated motion to dismiss, Plaintiffs reserve rights with respect to, and do not waive, this position. Plaintiffs intend to continue discussing this matter with Amazon. Plaintiffs also reserve rights to raise this matter with the Court if the Parties cannot agree, including, without limitation, by doing so in the broader case schedule the Parties intend to propose.

1  
2 By: /s/ Robert F. Lopez  
3

4 Robert F. Lopez (WSB # 21057)  
5 Steve Berman (WSB # 12536)  
6 Barbara Mahoney (WSB # 31845)  
7 1301 Second Avenue, Suite 2000  
8 Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
Email: robl@hbsslaw.com  
steve@hbsslaw.com  
bararam@hbsslaw.com

9 Wright A. Noel, WSBA No. 25264  
10 **CARSON NOEL PLLC**  
11 20 Sixth Avenue NE  
Issaquah, WA 98027  
Telephone: 425.837.4717  
Email: wright@carsonnoel.com

12 Philip L. Fraietta (*pro hac vice*)  
13 **BURSOR & FISHER, P.A.**  
14 1330 Avenue of the Americas, 32<sup>nd</sup> Floor  
New York, NY 10019  
Telephone: 646.837.7150  
Email: pfraietta@bursor.com

15 Neal J. Deckant (*pro hac vice* forthcoming)  
16 Julia K. Venditti (*pro hac vice* forthcoming)  
17 **BURSOR & FISHER, P.A.**  
18 1990 North California Boulevard, Suite 940  
Walnut Creek, CA 94596  
Telephone: 925.300.4455  
Email: ndeckant@bursor.com  
jvenditti@bursor.com

19  
20 *Attorneys for Plaintiffs*  
21  
22  
23  
24  
25  
26  
27  
28

## SO ORDERED.

DATED this 16<sup>th</sup> day of April, 2024.



RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE

Presented by:

FENWICK & WEST LLP

By: /s/ Brian D. Buckley  
Brian D. Buckley, WSBA No. 26423

401 Union Street, 5th Floor  
Seattle, WA 98101  
Telephone: 206.389.4510  
Facsimile: 206.389.4511  
Email: [bbuckley@fenwick.com](mailto:bbuckley@fenwick.com)

*Counsel for Defendants*  
AMAZON.COM, INC. and  
AMAZON.COM SERVICES LLC